IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

SECOND APPEAL NO. 894 OF 2004

Popat Krishna Pawar & ors. ... Appellants

V/s

Balkrishna Namdeo Patil & ors. ... Respondents

Miss Gauri Godse for the appellants.

Shri G. S. Godbole for the respondents.

CORAM: P.V. KAKADE, J.

DATED : 14TH DEC., 2004

P.C.:

1. This is an appeal preferred by the appellants defendants against the judgment and order passed by the Addl. District Judge, Solapur, dated 8.8.2002 dismissing the appeal and confirming the judgment and order passed by the Civil Judge, Jr. Divn., Karmala, dated 22.8.1996 decreeing the plaintiff's suit for specific performance of the contract with direction to the appellants to execute the sale deed of the suit property in favour of the plaintiff within one month on depositing the balance conideration and necessary charges of execution of sale deed.

2. I have heard the learned counsel for both parties.

Perused the record.

3. The plaintiff filed the suit for specific performance of the contract against the defendants with submission that defendant No.1 Popat, the son of defendant No.2, was absolute owner of the suit land being Gat No.104 admeasuring 6 Hectares 11-R situated at village Pande, Tal. Karmala, Dist. Solapur by virtue of partition between himself and his father. He entered into an agreement to sell the said land to the plaintiff for consideration of Rs.25,000/- and signed and executed one unregistered agreement on stamp paper of Rs.5/- in his favour on 19.9.1982. He endorsed the receipt of Rs.3000/- paid by the plaintiff from 23.7.1982 time to time and Rs.2000/- on the date of agreement. As per the terms of agreement, the remaining amount was to be paid within three years i.e. on or before 18.7.1985 and a registered sale deed was to be executed and possession was to be delivered to the plaintiff. It was also agreed that the encumbrances of society was to be repaid by the defendant No.1 till then so as to make the land free from encumbrances. On 17.5.1983, defendant No.1 Popat again executed another unregistered agreement on stamp paper of Rs.5/- in favour of the plaintiff acknowledging earlier receipt of Rs.7000/- in addition

to Rs.3000/- actually paid to him on 17.5.1983. On that day actual possession of the land was delivered in part performance of the contract and the other terms and conditions of the agreement dated 19.9.1982 were carried forward. On 23.11.1983, defendant No.1 again executed another agreement on stamp paper of Rs.5/- wherein the receipt of Rs.3000/- after 17.5.1983 and the receipt of Rs.2000/- dated 26.11.1983 against the transaction is admitted. Therefore, the plaintiff has paid total sum of Rs.20,000/- against the agreement of sale out of Rs.25,000/- and that he is willing to pay the balance of Rs.5000/- as per the order of the Court. The defendant has refused to execute the sale deed in spite of notice given by the plaintiff. Hence the suit came to be filed.

4. As there was dispute between defendant Nos. 1 & 2 in respect of the lands and mutations effected in the record of rights, the mutation No. 2801 of 1971 was challenged in R.C.S. No. 11 of 1985 filed by the defendant No.1 against defendant No.2 in Civil Court at Karmala. Therefore, the name of defendant No.2 is added in the suit. The plaintiff in the alternative has claimed refund of Rs.2000/- alongwith the damages.

5. Defendant No.2 filed written statement which was adopted by defendant No.1, wherein they have denied the agreement of sale between the parties. It is further denied that possession of the suit property was handed over to the plaintiff by defendant No.1. It is further denied that there was partition between defendant Nos. 1 and 2 in respect of their ancestral lands, by registered partnership deed. According to them, the suit land was allotted to the share of defendant No.2 and he alone was in possession and enjoyment of the same, but the mutation No. 2802 was wrongly and mistakenly recorded in the record of rights. Taking disadvantage of this fact, the defendant No.1 signed and executed agreement in favour of the plaintiff being aware of which the defendant No.2 has made an application to the Tahsildar and got the record corrected by M.E. No. 3741. It was alleged that since the defendant No.1 has no title to the suit land, the plaintiff cannot get any legal right or interest by virtue of the agreement. Therefore, the suit was sought to be dismissed. The learned Trial Judge adjudicated the dispute on merits and came to the conclusion that the evidence on record was sufficient to show that the plaintiff had proved that defendant executed an agreement of sale dated 19.9.1982 at which foot the amount of Rs.2000/- was paid and it was acknowledged by

the defendant No.1 as well as No.2. However, it was held that plaintiff had proved subsequent agreement between the parties and the fact that the possession was delivered on 17.5.1983 to the plaintiff. It was held that defendant No.2 was held to be the owner of the property during his life time only. It was further held that the plaintiff was and is ready and willing to perform his part of the contract and, therefore, he was entitled for specific performance of the said contract. Consequently, the decree came to be passed in favour of the plaintiff. Being aggrieved by the said judgment and order, appeal was carried to the District Court, Solapur. The Addl. District Judge heard the appeal on merits and confirmed the findings recorded by the learned Trial Judge taking into account the entire evidence on record and dismissed the appeal. Hence the present appeal.

6. At the outset, it may be noted that the close perusal of the entire dispute on record shows that there is absolutely no substantial question of law involved in this appeal and all the issues involved are issues of fact which are properly appreciated by both the Courts below and have recorded the reasons therefor. In fact, in the appeal memo itself, all the questions which are said to be raised are seen to be the issues relating to

the facts and pertaining to the appreciation of actual evidence. However Miss Gauri Godse, learned counsel for the appellant filed the additional grounds which are sought to be added as additional grounds for consideration, hence leave to amend the appeal memo was granted.

The additional ground sought to be raised is to the effect that, whether both the Courts below have taken into consideration that, assuming without admitting that the compromise recorded in Regular Civil Suit No. 11 of 1985 created or declared a future right, title and interest in favour of appellant No.1 will not be a valid transfer for want of registration as provided under Sec. 17(1)(b) of the Registration Act, 1908 and consequent execution of agreement in favour of respondent No.1 will not be enforceable. In this regard it must be noted that it is an admitted position that there was compromise decree between defendant Nos. 1 and 2 on which basis the suit came to be disposed of whereby the rights of the parties were affected and defendant No.1 has acted on the basis of said compromise. It was also submitted that such compromise would not be the valid transfer for want of registration and, therefore, the consequent acts of the parties also would not be specifically enforceable. In support of this submission

the learned counsel sought support from the Apex Court ruling in the case of **Bhoop Singh v/s Ram Singh Major,** reported in **(1995) 5 S.C.C. 709,** which relates to the issue of Registration contemplated under Sec. 17(2) (vi) of the Registration Act. However, if we peruse the judgment, para 18 is the ratio of the judgment wherein it is laid down that compromise decree, if bonafide, in the sense that the compromise is not a device to obviate payment of stamp duty and frustrate the law relating to registration, would not require registration. In a converse situation, it would require registration. Therefore, in the present case, obviously, the compromise was not entered into to obviate payment of stamp duty or to frustrate the law relating to registration because the issue involved is quite different and compromise was entered into for altogether different reasons. Under the circumstances, even by virtue of ratio laid down by the Supreme Court in the said case, said compromise cannot be said to be the compulsory registrable document. The learned counsel for the appellant thereafter sought to raise various other grounds, however, in my considered view, the question of registration as well as other allied issues sought to be raised today are being raised for the first time while arguing the second appeal which were also not part of the original appeal memo and, therefore, I have

no hesitation to hold on merits that those cannot be said to be the substantial questions of law.

7. In the case of **Kondiba Dagadu Kadam v/s Savitribai Sopan Gujar & ors., reported in A.I.R. 1999 SC 2213**, the Apex Court has observed that, the conditions mentioned in Sec. 100 of the C.P.C. must be strictly fulfilled before a second appeal can be maintained and no Court has the power to add to or enlarge those grounds. The second appeal cannot be decided on merely equitable grounds. The concurrent findings of facts howsoever erroneous cannot be disturbed by the High Court in exercise of the powers under this section. It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at by the last Court of fact, being the first appellate Court. In a case where from a given set of circumstances, two inferences are possible, one drawn by the lower appellate Court, is binding on the High Court in second appeal. Adopting any other approach is not permissible. This being the position, perusal of the judgments of both the Courts below, for which evidence is available on record, definitely shows that both the Courts below have properly appreciated the evidence on record and have recorded the findings accordingly in just, proper and correct manner.

In the result, I hold that the appeal deserves to be dismissed and stands dismissed in limine with no order as to costs.

Consequently, the civil application also stands dismissed with no order as to costs.

In view of the request made on behalf of the appellant, the effects of dismissal of this appeal stand stayed for eight weeks.

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CORAM: P.V. KAKADE, J.

DATED : 14TH DEC., 2004

OPERATIVE ORDER

1. Heard learned counsel for both sides.

2. For the reasons separately recorded, the appeal stands dismissed in limine with no order as to costs. Consequently, the civil application also stands dismissed with no order as to costs.

However, the status-quo granted earlier shall continue for a period of four weeks from today.

Leave to amend granted.

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